DePaul Journal of Sports Law

Volume 16
Issue 1 *Spring 2020*

Article 8

Convergence and Divergence in Stadium Ownership Structures

Robert Sroka

I. INTRODUCTION

In the broader business law literature, much has been written on the supposed convergence trend of corporate governance practices. Yet this academic discussion has barely extended to the professional sports context and in the instances where professional sports governance has been at issue, stadiums and stadium ownership have not been the subject of analysis. With stadium construction and renovation projects regularly running into the hundreds of millions or billions of dollars,[1] and ongoing stadium operations and debt repayments on such facilities often exceeding tens of millions each year,[2] stadium governance is a significant aspect of business and corporate governance worth illuminating. This article aims to contribute to the closing of this literature gap.

Although there are many prospective paths of inquiry, this study focuses on stadium ownership structures in four wealthy Anglosphere jurisdictions with a substantial professional sports and stadium presence: England, the United States, Canada, and Australia. Beginning with the baseline of the English Premier League as a proxy for England, and continuing with a comparative examination primarily focused on the National Football League (NFL), Major League Soccer (MLS), Canadian Football League (CFL), Australian Football League (AFL), and A-League, this study evaluates 114 stadium ownership structures. After a literature review on corporate governance convergence trends, stadium finance, and motivations for stadium construction, I move to a descriptive overview of the stadium holding structure data set. This is followed by the core discussion of a number of legal influences on stadium ownership as well as the relationship of stadium ownership to club controlled ancillary real estate development.

II. LITERATURE REVIEW

A. Corporate governance policy and trends

The literature concerning corporate governance convergence has primarily focused on private and publicly traded corporations and the institutional frameworks governing them at the national and international level.[3] Research has broadly concerned the adoption of corporate governance codes, legal or regulatory reform (such as requirements for outside directors, disclosure, and minority shareholder protection), and market trends (including CEO options, takeovers, and institutional investors).[4]

At the national level, Khanna, Kogan, and Palepu differentiate between de jure and de facto convergence, with the former referring to institutions and laws and the latter to the practical implementation of governance.[5] Along somewhat similar lines, Gilson divides convergence into three primary types – functional, formal, and contractual.[6] For Gilson, functional convergence

---

[1] JUDITH GRANT LONG, PUBLIC/PRIVATE PARTNERSHIPS FOR MAJOR LEAGUE SPORTS FACILITIES (2013).
[2] *Id* at 101.
[3] Toru Yoshikawa and Abdul Rasheed, *Convergence of Corporate Governance: Critical Review and Future Directions*, 17 CORPORATE GOVERNANCE: AN INTERNATIONAL REVIEW 388 (2009).
[4] *Id*.
[5] *Id*. at 389.
[6] Ronald J. Gilson, *Globalizing Corporate Governance: Convergence of Form or Function*, 49 AM. J COMP. L 329 (2001).

entails governance responses within already existing institutional frameworks that are sufficiently flexible to withstand such changes.[7] For institutions without this built in elasticity, convergence is operationalized though formal means.[8] Finally, with institutional arrangements that are neither internally flexible, nor amenable to change through the political process, there is contractual convergence.[9] The flipside of these convergence concepts – outlined by Meyer and Rowan,[10] and Fiss and Zajac,[11] and Yoshikawa and Rasheed[12] – is so-called decoupling, whereby the illusion of convergence is attained or claimed by a country, but the substance of practice does not support this claim.[13]

Convergence has been explained at the firm and exchange levels through financial market integration, portfolio integration, and product market integration.[14] Others have focused on the harmonization of accounting rules and governance codes.[15] Still the convergence trend has not been a one-way flow. Some academics view convergence as being impeded by a lack of consensus on what the ideal governance regime is in the first place,[16] as well as divergent forces such as path dependency,[17] rent seeking interest groups,[18] or differing property rights regimes. Often however, convergence has been framed as moving towards an "Anglo-American" model, although even within this dominant thread, some have noted significant distinctions.[19]

In the realm of stadium related corporations there is a somewhat different range of forces present. Compared to firms in OECD marketplaces generally, and as this article will document, stadium related corporations are more likely to be state owned enterprises or public-private partnerships. At the firm level, while there are similar imperatives for implementing transparency measures, or seeing governance from outside directors, other market issues – such as executive compensation, takeovers, minority protection, and institutional investors – are for obvious reasons less present, or absent altogether. At the national level however, there would seem to be similar incentives for how stadiums should be held: from an efficiency standpoint, success with a particular model of governance for comparable stadium projects should make a particular public or private ownership structure more or less common within a country and across national borders.

---

[7] *Id*.
[8] *Id*.
[9] *Id*.
[10] John W. Meyer and Brian Rowan, *Institutionalized Organizations: Formal Structures as Myth and Ceremony*, AM. J SOCIOLOGY (1977).
[11] Peer C. Fiss and E.J. Zajac, *The Diffusion of Ideas Over Contested Terrain: The (Non)adoption of a Shareholder Value Orientation Among German Firms*, 49 ADMIN. SCI. Q 504 (2004).
[12] Yoshikawa and Rasheed, *supra* note 3.
[13] *Id*.
[14] Yoshikawa and Rasheed, *supra* note 3.
[15] John C. Coffee, *The Future As History: The Prospects for Global Convergence in Corporate Governance and Its Implications*, 93 Nw. U.L. Rev. 641 (1999).
[16] Steen Thomsen and Torben Pedersen, *Nationality and ownership structures: The 100 largest companies in six European nations*, MIR: MANAGEMENT INTERNATIONAL REVIEW 149 (1996).
[17] DOUGLASS NORTH, UNDERSTANDING THE PROCESS OF ECONOMIC CHANGE (2005); Yoshikawa and Rasheed, *supra* note 3.
[18] Coffee, *supra* note 15.
[19] Steven Toms and Mike Wright, *Divergence and Convergence within Anglo-American Corporate Governance Systems: Evidence from the US and UK, 1950–2000*, 47 BUSINESS HISTORY 267 (2005).

While the dearth of literature on stadium governance allows for many prospective aspects through which the subject could be addressed, this project focuses on stadium ownership structures. At the national level however, there would seem to be similar incentives for how stadiums should be held: success with a particular governance model for comparable stadium projects should make a given ownership structure more or less common within and across borders. While some work has theorized sport partnership governance,[20] or the mechanics of governance in a sport infrastructure context,[21] this project focuses on how law influences the structural landscape of stadium ownership with reference to supposed convergence trends in a broader corporate governance law literature.

B. Stadium finance

Although there is a significant gap in the literature as it pertains to stadium governance after the facility development or redevelopment project is complete and the venue is in the operational phase, much has been written on stadium finance in North America. This aspect of the literature is important to understanding much of the context surrounding post-construction governance in the baseline jurisdiction of this paper, England, as well as the three comparator countries.

In North America, stadiums receive heavy public subsidies. Long's detailed accounting of public-private stadium partnerships in North America highlights that public partners paid almost 64 percent of NFL stadium capital costs between 1990 and 2009.[22] There are several explanations for this subsidization phenomena. First, despite being thoroughly discredited, some governments might see stadiums as economic boons.[23] Second, governments can see stadiums as agents of urban or neighborhood renewal.[24] Even if arguments of net economic gains in a region fall flat on the face of significant literature to the contrary, more nuanced arguments can be made that a stadium can rearrange regional economic activity and revitalize a particular geographic area.[25]

A third important explanation for North American stadium subsidies is jurisdictional competition. Building off of Tiebout's basic theory of local expenditure,[26] sports teams and the stadiums they play in are an amenity that jurisdictions may subsidize in order to compete with other alternative jurisdictions in which firms and talent may wish to locate.[27] This competition is

---

[20] *See* Ian McDonald, *Theorising Partnerships: Governance, Communicative Action and Sport Policy*, 34 J SOC. POL'Y 579 (2005); NEIL KING, SPORT POLICY AND GOVERNANCE (2009); Jonathan Grix & Lesley Phillpots, *Revisiting the 'Governance Narrative'; 'Asymmetrical Network Governance' and the Deviant Case of the Sports Policy Sector*, 26 PUB. POL'Y & ADMIN. 3 (2011); Lesley Phillpots et al., *Centralized Grassroots Sport Policy and 'New Governance': A Case Study of County Sports Partnerships in the UK–Unpacking the Paradox*, 46 INT'L REV. SOC. SPORT 265 (2011).

[21] *See* Russell Hoye & Matthew Nicholson, *Sport Stadia Governance*, 13 SPORT MGMT. REV. 171 (2010); Martijn Van den Hurk & Koen Verhoest, *The Governance of Public–Private Partnerships in Sports Infrastructure: Interfering Complexities in Belgium*, 33 INT'L J. PROJECT MGMT. 201 (2015).

[22] Long, *supra* note 1 at 110-115.

[23] *See* ROBERT BAADE AND VICTOR MATHESON, FINANCING PROFESSIONAL SPORTS FACILITIES (2011).

[24] *Id*.

[25] Mark Rosentraub, *Sports Facilities and Urban Redevelopment: Private and Public Benefits and a Prescription for a Healthier Future*, 1 INT'L J. SPORT FIN. 212 (2006).

[26] Charles M.Tiebout, *A Pure Theory of Local Expenditures*, 64 J POLI ECON. 416 (1956).

[27] *See* Kevin Delaney and Rick Eckstein, *Local Growth Coalitions, Publicly Subsidized Sports Stadiums, and Social Inequality*." 30 HUMANITY & SOC. 84 (2006).

effective in attracting such significant public subsidies because of a fourth and related explanation: the monopoly power and artificial scarcity of professional sports teams in North America.[28] The five major North American sports leagues (MLB, MLS, NBA, NFL, and NHL) are effective monopolies, which allows the supply of teams to be limited to a level below demand.[29] Combined with the ability for successful relocation of teams, leagues can leverage this artificially reduced supply to extract substantial stadium subsidies for the privilege of hosting a team.[30]

From this status quo of heavy American stadium subsidies for professional sports, a norm that has been largely matched within the large and rich Anglosphere by Canada and Australia, one might expect the second largest jurisdiction with the only sports league that can match the NFL in revenue to also converge to this norm in much the same way convergence has been a trend in Anglo-American corporate law and governance. However, other factors have proven more instructive in understanding stadium ownership structures.

III. ENGLISH PREMIER LEAGUE

The Premier League is the first division of professional soccer in England and Wales. The League is a private limited company (PLC) with its 20 shares held by its current members.[31] Relegated clubs transfer their shares to clubs promoted from the second division Championship at the end of the season.[32] Unlike North American leagues, European soccer leagues such as the Premier League operate on a promotion and relegation system whereby bottom finishers are relegated to the second division league and an equal number of top finishers are promoted to the first division.

To evaluate stadium holding structures in England, this study focuses on the Premier League. However, given the promotion and relegation structure, it is necessary to evaluate teams beyond the current composition of the Premier League. To this end, I have collected a data set of 34 soccer stadiums in England and Wales. This data set includes stadiums in three primary categories: the stadium of every Premier League club for the 2017-2018 season, the stadiums of clubs relegated in the previous three years, as well as stadiums of clubs that participated in the Premier League in three of the previous ten seasons. For these last two categories, only stadiums with a capacity of at least 20,000 were included. In addition to the three primary categories, I have included the national team's home, Wembley, the largest stadium in the country.

The data set includes select clubs beyond the current makeup of the Premier League to capture the dynamics of promotion and relegation – namely to analyze if there are trends specific to clubs that have regularly been in the promotion (Championship to Premier League) and relegation (Premier League to Championship) zones. Indeed the most commonly listed business risk in the financial statements for clubs outside of the so-called "top six" in the Premier League

---

[28] Stephen F. Ross, *Monopoly Sports Leagues*, 73 MINN. L. REV. 643 (1989).
[29] *Id*.
[30] *Id*.
[31] *About the Premier League*, ENGLISH PREMIER LEAGUE, https://www.premierleague.com/about.
[32] *Id*.

(Arsenal, Chelsea, Liverpool, Manchester City, Manchester United, and Tottenham) was relegation and the substantial loss of revenues associated with relegation.

For each stadium in the data set, I collected three key variables: the ultimate owner of the stadium, the stadium's corporate structure, and the original purpose for which the stadium was constructed or, in the case of older facilities, substantially renovated. To collect the first two variables, I ascertained the financial statements for each club in this data set from Companies House.[33] A primary benefit of centering this study on England is that all firms must make their financial statements publicly available through Companies House.

From reviewing the notes in the most recent financial statements, I was able isolate the ultimate controlling parties of the clubs, whether the stadium was owned by the same corporation as the team, as well as the general holding structure of club and stadium. If this review revealed that stadium and club ownership was not one and the same, the notes typically also described controlling companies as well as companies that the club company itself had controlling interests in. If the club-controlled entities were not related to the stadium holding firm, then the notes generally showed what firm or entity the club was leasing the stadium from. For the third variable, a review of media sources and official stadium websites provided historical overview of the stadium and the primary reasons motivating stadium construction.

Table 1. English Premier League stadium ownership structures

Stadium	Capacity†	Owner	Structure	Purpose	Ancillary Dev.	Club Control
Anfield	54,000	Club	PLCD; subsidiary	Club	No	No
Ashton Gate	27,000	Club	PLCD; within holding	Club	Yes	No
bet365 Stadium	30,000	Club	PLCS; subsidiary	Club	Yes	No
Bolton Stadium	28,000	Club	PLCD; subsidiary	Club	Yes	Yes
Cardiff City Stadium	32,000	Club	PLCD;	Club	Yes	Yes
Carrow Road	27,000	Club	PLCD;	Club	Yes	No
Craven Cottage	25,000	Club	PLCD; subsidiary	Club	No	No
DW Stadium	25,000	Club	PLCD; lease land	Club	Yes	No
Emirates Stadium	60,000	Club	PLCD; subsidiary	Club	Yes	Yes
Etihad Stadium	54,000	City	Direct city owned	C'wealth Games	Yes	Yes
Falmer/AMEX	30,000	Club	PLCS; subsidiary	Club	No	No

[33] *Companies House*, DEPARTMENT FOR BUSINESS, https://beta.companieshouse.gov.uk/.

Table 1. English Premier League stadium ownership structures

Stadium	Capacity†	Owner	Structure	Purpose	Ancillary Dev.	Club Control
Goodison Park	39,000	Club	PLCS; subsidiary	Club	No	No
KCOM Stadium	25,000	City	Direct city owned	Club	No	No
King Power Stadium	32,000	Club	PLCD; subsidiary	Club	Yes	Yes
Kirklees Stadium	24,000	JV	PLC	Club, rugby	Yes	Yes
Liberty	20,000	City	Direct city owned	Club, rugby	Yes	No
London Stadium	60,000	City, Public Development Corp	LLP	Olympics	Yes	No
Madejski Stadium	24,000	Club	PLCD	Club	Yes	Yes
Molineux Stadium	31,000	Club	PLCD; within holding	Club	No	No
Old Trafford	75,000	Club	PLCD; subsidiary	Club	No	No
Pride Park	33,000	Club	PLCD; subsidiary	Club	Yes	Yes
Riverside Stadium	34,000	Club	PLCD; subsidiary	Club	No	No
Selhurst Park	26,000	Club	PLCD;	Club	Yes	No
Stadium of Light	48,000	Club	PLCD; within holding	Club	No	No
Stamford Bridge	41,000	Nonprofit	PLCS§; subsidiary	Club	No	No
St Andrews Stadium	29,000	Club	PLCD; within holding	Club	No	No
St James' Park	52,000	City	Direct city owned	Club	No	No
St Mary's Stadium	32,000	Club	PLCS; subsidiary	Club	No	No
The Hawthorns	26,000	Club	PLCD;	Club	No	No
Tottenham Hotspur Stadium	62,000	Club	PLCD; subsidiary	Club	Yes	Yes
Turf Moor	21,000	Club	PLCD	Club	No	No
Vicarage Road	21,000	Club	PLCD; subsidiary	Club	No	No

Table 1. English Premier League stadium ownership structures

Stadium	Capacity†	Owner	Structure	Purpose	Ancillary Dev.	Club Control
Villa Park	42,000	Club	PLCD; within holding	Club	No	No
Wembley	90,000	FA	PLCD‡	England, FA Cup	Yes	No

†: Stadium capacities in all tables are rounded to the nearest thousand.

‡: Private Limited Company Direct: PLC directly holding stadium and club.

§: Private Limited Company Separate: Stadium PLC separate from club PLC.

A. Findings

Out of the 34 Premier League stadiums covered in this study, 27 are owned by a PLC that also holds the primary tenant, or a PLC that is ultimately controlled by the same party as the club. Within these 27, there are four primary subcategories. The first, seen in five instances, is where the stadium is directly held by a holding company and the club PLC is a subsidiary of the holding company (Sunderland's Stadium of Light, Villa Park, Molineux Stadium, and Ashton Gate). The second category represents stadiums held in a PLC separate from the club, but both the stadium company and the club company are subsidiaries of the same parent. Four stadiums are held this way.

The third category includes PLCs where the stadium is held by the same company as the club, and this unified firm is not a subsidiary of another controlling company, but rather controlled by natural person shareholders. Six stadiums have this structure, in addition to Wembley (National) Stadium being held by the Football Association PLC. These six stadiums are in the lower range of capacity and their associated clubs are more prone to relegation from the Premier League or bottom 10 results (out of 20 clubs). Also closely related to this category is Wigan's DW Stadium, where the only substantial difference is that the land the stadium is built upon is leased.

Finally, the fourth category is where the stadium is held by the same PLC as the club, but the unified company is a subsidiary of another holding firm. With 10 stadiums, this is the most common form of stadium ownership in the data set. Two of the clubs in this category, Manchester United and Arsenal, have publicly traded share capital, although both also have clear controlling parties. This is also the most popular form of stadium holding for "top six" clubs (three of six), although the structure is seen throughout the data set.

The remaining stadiums are a hodgepodge of holding structures arising from a range of stadium construction purposes. Perhaps most interesting however is the unique structure of Chelsea Stadium Limited (the owner of Stamford Bridge) and the naming rights of Chelsea Football Club, which are both subsidiaries of Chelsea Pitch Owners, a non-profit PLC created in the early 1990s with the intent of preventing property redevelopment of the land upon which Stamford Bridge resides. Chelsea Football Club, now owned by billionaire Roman Abramovich, has a 199-year lease for nominal rent. Under Abramovich, Chelsea has transformed from a Premier League also-ran into a champion and one of the world's wealthiest clubs. Although the club made an offer to Chelsea Pitch Owners to purchase the stadium and land, the fan shareholders declined this proposal.

Etihad Stadium, owned by the Manchester City Council, was constructed primarily for the Commonwealth Games and to be repurposed thereafter as a replacement for Manchester City's Maine Road.[34] When the project and lease were contemplated, Manchester City was a lower half of the Premier League club that would not have had the financial means for a new facility. Like Chelsea, new ownership has since made the club into a champion and one of the world's elite,[35] and new television contracts have transformed the finances of the Premier League more generally.

London Stadium was a similar legacy and conversion project from the 2012 Olympics. The stadium is ultimately owned by the City of London through a development corporation tasked with redeveloping the Olympic Park, and is leased to West Ham United.[36] As with Etihad Stadium, the facility likely would not have been constructed in the location, configuration, and timeframe it was but-for the Olympic Games.

In Newcastle, St James' Park has been owned by City Council for decades. With the council-owned KCOM in Hull and Liberty in Swansea, these stadiums were substantially publicly financed, largely because councils desired a new stadium as a public good and the clubs at the time of construction had insufficient financial means.[37] A similar situation existed in Huddersfield, although Kirklees Stadium is a joint venture held 40 percent by each of the local council, the football club, with the remaining 20 percent owned by a rugby club.[38] Generally however, with the influx of revenue and wealthier owners into the Premier League and Championship within the past decade, extracting public welfare might become even rarer than it has been relative to what is seen in North America.

IV. STADIUM OWNERSHIP STRUCTURES IN THE UNITED STATES, CANADA, AND AUSTRALIA

Stadium governance in English soccer is perhaps best contextualized through comparison to the three large and wealthy English-speaking countries in the world outside of the United Kingdom: the US, Canada, and Australia. As we will see in this section, despite similar corporate

[34] Steve Wilson, *How Manchester City Won the Stadium Lottery*, THE TELEGRAPH (Jan. 13, 2011), https://www.telegraph.co.uk/sport/football/teams/manchester-city/8257210/How-Manchester-City-won-the-stadium-lottery.html.
[35] *Id*.
[36] Owen Gibson, *How West Ham Struck the Deal of the Century with Olympic Stadium Move*, THE GUARDIAN (Apr. 14, 2006), https://www.theguardian.com/football/2016/apr/14/west-ham-deal-century-olympic-stadium.
[37] *See* KCOM Stadium, *About the KCOM Stadium*, http://kcomstadium.com/about-the-kcom-stadium; Rachel Jones, *New Deal for Swansea's Liberty Stadium*, (Nov. 17, 2017), https://businessnewswales.com/new-deal-swanseas-liberty-stadium/.
[38] David Conn, *Huddersfield's Community Stadium Dream Sours in Ownership Wrangle*, THE GUARDIAN (May 5, 2009), https://www.theguardian.com/global/2009/may/06/huddersfield-town

laws and histories,[39] and a documented convergence trend within the broader realm of corporate governance, this convergence trend has not extended to stadium governance.

For each stadium I collected the same variables as with the England data set: the ultimate owner, the stadium's corporate structure, and the original purpose for which the stadium was constructed or substantially renovated, whether there is ancillary development or club controlled ancillary development. Without the benefit of equivalent sources to Companies House, I used a combination of websites from teams, stadiums, stadium authorities, as well as sub-federal governments. I also accessed summaries from the National Sports Law Institute. Where public financial statements were available, these were likewise employed.

A. United States

In the US, the National Football League is the best comparator to the English Premier League as opposed to Major League Soccer – similar to the Premier League, the NFL is the dominant professional sports league and the two leagues are the world's largest in revenue terms. One issue with using the NFL as a comparator is that the NFL has far more competitive and financial parity than the Premier League due in large part to the NFL salary cap and draft. Indeed at the bottom range of this data set, there are perhaps more commonalities with MLS – the level of play in MLS is sometimes compared to that of the English Championship and the soccer specific stadiums in MLS are similar in size to those seen in the Championship or with less wealthy Premier League clubs (capacities in the 18,000-25,000 range).

Thus, I have built data sets of the 2018 permanent NFL stadiums as well as soccer specific MLS stadiums for US teams (there are three MLS stadiums included in the Canadian discussion). The temporary NFL stadiums in Los Angeles and the planned stadium in Las Vegas are excluded from the NFL set, while non-soccer specific stadiums are excluded from the MLS set (although several MLS teams play in NFL stadiums).

1. National Football League

The NFL has a traditional North American franchise structure, although the league formally considers itself a trade association with 32 member teams held by private owners. 24 of 29 permanent NFL stadiums in 2018 are publicly owned. Of these 24 publicly owned stadiums, four are directly held by a municipal government, four are owned by counties, one is jointly held by a city and county (the Oakland Coliseum), 14 are owned by public authorities, and one (Soldier Field) by a conventional agency (the Chicago Park District).

Starting with the most common structure, a public authority is a (typically state) government created agency for the purpose of participating in the economy. Extremely common in the US, public authorities differ from conventional agencies in that they are not directly accountable to elected officials and can operate outside of many state government norms.[40] These authorities have corporate powers and are governed by boards appointed for varying terms by elected officials. Many authorities are purpose-built stadium authorities, while others are

---

[39] Andrew Lilico, *In the Trump Era, the Plan for a Canadian-U.K.-Australia-New Zealand Trade Alliance is Quickly Catching on*, FINANCIAL POST (Feb. 13, 2017), http://business.financialpost.com/opinion/in-the-trump-era-the-plan-for-a-canadian-u-k-australia-new-zealand-trade-alliance-is-quickly-catching-on.
[40] *See* Jerome J. Shestack, *The Public Authority*, 105 U. PA. L. REV. 553 (1957).

merged with tourism or convention authorities. In some cases, stadium or tourism authorities also govern a Major League Baseball (MLB) stadium.

Table 2. NFL stadium ownership structures

Stadium	Capacity	City	Owner	Structure†	Ancillary Dev.	Club Control
Arrowhead Stadium	76,000	Kansas City	Jackson County Sports Complex Authority	Public authority	No	No
AT&T Stadium	80,000	Arlington	City of Arlington	City	No	No
Bank of America Stadium	75,000	Charlotte	Panthers Stadium LLC	LLCS	No	No
Century Link Field	68,000	Seattle	Washington State Stadium Authority	Public authority	Yes	Yes
FedEx Field	82,000	Landover	Dan Snyder	LLCD	No	No
FirstEnergy Stadium	67,000	Cleveland	City of Cleveland	City	No	No
Ford Field	65,000	Detroit	Detroit Wayne County Stadium Authority	Public authority	Yes	Yes
Gillette Stadium	66,000	Foxborough	Kraft Group	LLCD	Yes	Yes
Hard Rock Stadium	65,000	Miami Gardens	South Florida Stadium LLC	LLCS	No	No
Heinz Field	68,000	Pittsburgh	Sport and Exhibition Authority of Pittsburgh and Allegheny County	Public authority	No	No
Lambeau Field	81,000	Green Bay	City of Green Bay/Brown County	City, County	Yes	Yes
Levi's Stadium	68,000	Santa Clara	Santa Clara Stadium Authority	Public authority	Yes	Yes
Lincoln Financial Field	69,000	Philadelphia	City of Philadelphia	City	No	No
Lucas Oil Stadium	67,000	Indianapolis	Indiana Stadium Authority	Public authority	No	No
M&T Bank Stadium	71,000	Baltimore	Maryland Stadium Authority	Public authority	No	No

Table 2. NFL stadium ownership structures

Stadium	Capacity	City	Owner	Structure†	Ancillary Dev.	Club Control
Mercedes-Benz Superdome	73,000	New Orleans	Louisiana Stadium and Exposition District	Public authority	No	No
Mercedes-Benz Stadium	71,000	Atlanta	Georgia World Congress Center Authority	Public authority	No	No
Met Life Stadium	82,000	East Rutherford	MetLife Stadium Company	LLCS	No	No
New Era Field	71,000	Orchard Park	Erie County	County	No	No
Nissan Stadium	69,000	Nashville	Nashville County	County	No	No
NRG Stadium	72,000	Houston	Harris County - Houston Sports Authority	Public authority	No	No
Oakland Coliseum	53,000	Oakland	Oakland-Alameda County Stadium Authority	Public authority	No	No
Paul Brown Stadium	65,000	Cincinnati	Hamilton County	County	Yes	No
Raymond James Stadium	65,000	Tampa	Hillsborough County	County	No	No
Soldier Field	61,000	Chicago	Chicago Park District	Public agency	No	No
Sports Authority Field	76,000	Denver	Metropolitan Football Stadium District	Public authority	No	No
TIAA Bank Field	67,000	Jacksonville	City of Jacksonville	City	No	No
University of Phoenix Stadium	63,000	Glendale	Arizona Sports and Tourism Authority	Public authority	Yes	No
US Bank Stadium	66,000	Minneapolis	Minnesota Sports Facilities Authority	Public authority	Yes	No

†: LLCS: Limited Liability Corporation, Subsidiary; LLCD: Limited Liability Corporation, Directly Owned

2. Major League Soccer

MLS is the first division of soccer in the US and Canada. A legacy product of the 1994 World Cup, MLS is largely reliant on gate attendance for revenues.[41] As of the 2018 season, there will be 15 MLS soccer specific stadiums in the US. Of these 15, eight are publicly owned. Unlike the NFL where public authorities are the most common, only Houston's MLS stadium is held by a public authority, which also owns three other major league stadiums in the city. Another, Philadelphia's stadium in suburban Chester, is held by the county. In Chester's case, the city has been in various forms of receivership[42] and was likely not deemed by the state or county to be an appropriate holding vehicle. Besides these two instances, the remainder of publicly owned MLS stadiums are held by municipalities.

For the seven stadiums that are privately held, the unique single-entity structure of MLS adds structural wrinkle. Under US antitrust law, a deemed "single-entity" cannot conspire with itself to restrain trade and is thus incapable of violating antitrust law.[43] For a professional sports league, this status would provide a distinct advantage in collective bargaining.[44] As a relatively recent invention conceptualized with this strategic objective in mind, this means that all MLS clubs are formally owned by the league (the single-entity), and the local operating groups actually own a share in the league instead of a franchise.[45] However private stadiums are typically held by separate companies owned by the holders of local MLS operating rights – thus the ultimate controlling parties are generally one and the same despite the contortion of the MLS governance structure.

Table 3. MLS stadium ownership structures

Stadium	Capacity	City	Owner	Owner structure†	Ancillary Dev.	Club Control
Audi Field	20,000	District of Columbia	District of Columbia	City	Yes	Yes
Avaya Stadium	18,000	San Jose	San Jose Earthquakes	LLCD	Yes	Yes
Banc of California Stadium	22,000	Los Angeles	LAFC Sports	LLCD	No	No
BBVA Compass Stadium	22,000	Houston	Harris County-Houston Sports Authority	County/Public authority	Yes	No

[41] John C. Bradbury, *Determinants of Attendance in Major League Soccer*, 34 J. SPORT MGMT. (2020) at 53.
[42] Municipalities Financial Recovery Plan for the City of Chester, ECONSULT SOLUTIONS, (Jul. 15, 2016), http://www.chestercity.com/wp-content/uploads/2016/07/FILED_Financial_Recovery_Plan_Chester_07152016.pdf.
[43] Michael S. Jacobs, *Professional Sports Leagues, Antitrust, and the Single-Entity Theory: A Defense of the Status Quo*, 67 IND. L.J. 25 (1991) at 27-28.
[44] Gary R. Roberts, *Reconciling Federal Labor and Antitrust Policy: The Special Case of Sports League Labor Market Restraints*, 75 GEO. L. J. 19 (1986).
[45] Terry Brennan, How MLS' Single Entity Status Works and its Relationship With Antitrust Law, LAW IN SPORT, (Mar. 6, 2017), https://www.lawinsport.com/topics/articles/item/how-mls-single-entity-status-works-and-its-relationship-with-antitrust-law.

Table 3. MLS stadium ownership structures

Stadium	Capacity	City	Owner	Owner structure†	Ancillary Dev.	Club Control
Children's Mercy Park	18,000	Kansas City, Ks	Kansas Unified Development LLC	LLCS	No	No
Dick's Sporting Goods Park	18,000	Commerce City, Co	City of Commerce City	City	Yes	Yes
Mapfre Stadium	19,000	Columbus	Precourt Sports Ventures LLC	City	No	No
Orlando City Stadium	25,000	Orlando	Orlando Sports Holdings	LLCS	No	No
Providence Park	21,000	Portland	City of Portland	City	Yes	No
Red Bull Arena	25,000	Harrison, NJ	Hudson County Improvement Authority	Public authority	Yes	No
Rio Tinto Stadium	20,000	Sandy, Ut	Utah Soccer LLC	LLCD	No	No
StubHub Center	27,000	Carson, Ca	AEG	LLCS	No	No
Talen Energy Stadium	18,000	Chester, Pa	Delaware County	County	Yes	Yes
Toyota Park	20,000	Bridgeview, Il	Village of Bridgeview	City	No	No
Toyota Stadium	20,000	Frisco, Tx	City of Frisco	City	Yes	No

†: LLCS: Limited Liability Corporation, Subsidiary; LLCD: Limited Liability Corporation, Directly Owned

B. Canada

In Canada, most large outdoor stadiums are for the Canadian Football League.[46] The CFL is a nine team franchise structured league similar to the NFL with six current teams owned by private parties and three by non-profit community organizations.[47] As with MLS, there have been instances of one owner controlling multiple teams, and a history of financial and fan base difficulties.[48] Most CFL salary expenses are now covered by its national television contract, but

---

[46] *See* Table 4.

[47] Dan Ralph, *CFL Asking Federal Government for up to $150 Million in Financial Assistance*, WINNIPEG FREE PRESS (April. 28, 2016), https://www.winnipegfreepress.com/sports/football/cfl/cp-newsalert-cfl-asking-government-for-up-to-150-million-in-financial-aid-570025142.html.

[48] Cam Cole, *TV Deal Keeps CFL Afloat as League Suffers From Diminished Ratings, Alarming Attendance Figures in Some Markets*, NATIONAL POST (Nov. 20, 2015), http://nationalpost.com/sports/football/cfl/tv-deal-keeps-cfl-afloat-as-league-suffers-from-diminished-ratings-alarming-attendance-figures-in-some-markets.

profitability is substantially determined by gate receipts.[49] The league's popularity is traditionally strongest in its prairie markets (Calgary, Edmonton, Regina, and Winnipeg).[50]

CFL stadiums generally range in capacity from 20,000 to 60,000, and the average CFL game attendance is around 25,000.[51] There are also two stadiums shared between CFL and MLS teams, and one soccer specific MLS stadium. Also included in this 12 facility data set is Rogers Centre, which has become a Major League Baseball only venue, but was the long-time home of the Toronto Argonauts CFL team, and Montreal Olympic Stadium, now used for certain playoff CFL or MLS games, but previously home to the MLB Expos and CFL Alouettes.

Of the 12 stadiums, only two are privately held. Stade Saputo, a soccer specific stadium in Montreal, was initially privately financed (although the MLS renovation was funded by the Quebec government) and is owned by the Saputo family, operators of the MLS club.[52] Rogers Centre in Toronto was originally the provincially owned SkyDome, but was sold to Rogers Communications, the publicly traded communications behemoth and owners of the Blue Jays, in 2005.[53] A third stadium, Investors Group Field in Winnipeg, is a joint venture corporation held by four parties: the province, the city, the team, and the University of Manitoba (on whose campus the facility is located).[54]

The involvement of public universities as owners of stadiums where professional sports are the primary revenue activity is also seen in Calgary and Montreal (Molson Stadium at McGill University). While many American public universities own professional-sized American football stadiums, these are not shared with NFL teams except on a temporary basis (such as in Minneapolis and Los Angeles). In Canada however, with major public universities often located in major cities, the university/professional football stadium is a sensible dual-purpose structure.

The most common stadium holding structure in Canada is municipal ownership, with five facilities under this heading. The remaining two stadiums, BC Place and Montreal Olympic Stadium, are owned through provincial crown corporations.[55] A provincial crown corporation in Canada is akin to a state public authority in the US – while reporting to a political ministry, crown corporations are somewhat insulated from political interference and can participate in the broader economy.[56]

---

[49] *Id*.
[50] Rob Williams, *Outspoken BC Lions Player Makes Fun of CFL Attendance*, OFFSIDE VANCOUVER (Sep. 18, 2019), https://dailyhive.com/vancouver/bc-lions-duron-carter-cfl-attendance.
[51] *See* Table 4.
[52] *Stade Saputo*, Impact Montreal, https://www.impactmontreal.com/en/stadium/stade-saputo.
[53] Emma McIntosh, *12 Years Ago, the Rogers Centre Was Just the SkyDome*, TORONTO STAR (Feb. 2, 2017), https://www.thestar.com/news/gta/2017/02/02/12-years-ago-the-rogers-centre-was-just-the-skydome.html.
[54] Bartley Kives, *Final Cost of Investors Group Field Expected to be $384M*, CBC NEWS (Jun. 20, 2016), http://www.cbc.ca/news/canada/manitoba/investors-stadium-cost-1.3639529.
[55] *See PavCo*, http://www.bcpavco.com/resources/reports/; *Régie des installations olympiques*, Quebec, http://www4.gouv.qc.ca/fr/Portail/citoyens/programme-service/Pages/Info.aspx?sqctype=mo&sqcid=220.
[56] Kazi Stastna, *What Are Crown Corporations and Why Do They Exist?*, CBC NEWS (Apr. 1, 2012), http://www.cbc.ca/news/canada/what-are-crown-corporations-and-why-do-they-exist-1.1135699.

Table 4. Stadium ownership structures in Canada

Stadium	Capacity	City	Owner	Structure	Purpose of stadium
BC Place	54,000	Vancouver	PavCo	Public Authority	Attract MLB/Olympics/CFL/MLS
BMO Field	30,000	Toronto	City of Toronto	City	MLS
Commonwealth Stadium	56,000	Edmonton	City of Edmonton	City	Commonwealth Games
Investors Group Field	33,000	Winnipeg	Triple B Stadium Inc.	Non-profit corp.	CFL
McMahon Stadium	46,000	Calgary	University of Calgary	University	University/CFL
Molson Stadium	25,000	Montreal	McGill University	University	University/CFL
Mosaic Stadium	33,000	Regina	City of Regina	City	CFL
Olympic Stadium	66,000	Montreal	Régie des installations olympiques	Public Authority	Olympics/MLB/CFL
Rogers Centre	53,000	Toronto	Rogers Communications	Private corp.; public traded	MLB
Stade Saputo	20,000	Montreal	Saputo Inc.	Private corp.	MLS
TD Place	24,000	Ottawa	City of Ottawa	City	CFL
Tim Hortons Field	24,000	Hamilton	City of Hamilton	City	CFL/Pan Am Games

C. Australia

The Australian data set covers 24 stadiums used in the Australian Football League and the A-League, the first division of Australian soccer. Australian stadiums are generally at least dual purpose, with the most common sharing occurring in rectangular stadiums between soccer and rugby clubs, and oval stadiums between AFL and cricket teams.[57] This said, there are other varieties of crossover league and sport sharing. However, including two of four leagues provides a representative sample, and makes for a better comparison with Canada (with the AFL being a natural comparator for the CFL), and the soccer specific stadiums of MLS. It is also common for the largest cities – Sydney and Melbourne – to have multiple teams in the same league, often in different stadiums.

Of the nine A-League stadiums included, only one is privately held. Three of the eight public stadiums are directly owned by the state government, while another three are owned through state government authorities, one by a public trust, and one by a city council. The AFL

[57] *See* Table 5.

stadium story is much the same. Here state governments directly own eight stadiums, one is owned by a state government authority, one is held by a trust, and four by city councils.[58]

State governments are the dominant players in Australian stadiums. Roughly half of state-controlled stadiums are owned directly, but New South Wales and Western Australia have placed ownership in purpose-built stadium crown corporations, akin to those seen in some Canadian provinces. However, with the exception of Sydney stadiums related to the 2000 Olympics, most new or major renovation stadium projects were primarily intended to play host to at least two professional sports. Interestingly, the only non-government owned stadiums are owned by either the national or regional sections of the AFL.

Like MLS, Australian leagues also have unique structures at the league and club level worth noting. The AFL, the stronger and higher revenue of the two Australian leagues discussed, is directly governed by an independent commission with commission members selected by clubs.[59] The commission grants licenses to clubs for the right to operate within the league. Most clubs are held as non-profit corporations, controlled by a broad member shareholder base and governed by a board of directors,[60] while other clubs are held by regional bodies of Australian Rules Football. Attendance in the AFL is strong (over 30,000 per game)[61] and most clubs are profitable. Profits, however, are reinvested by clubs into growing the game locally.

The ten team A-League, launched in 2004, is owned by the Australian Football Federation (AFF). As with the AFL Commission, the AFF licenses operating rights to clubs.[62] With the A-League however, clubs are privately owned, and profits are retained privately. A-League attendance lags that of the AFL and is the weakest of the leagues covered in this paper, with average game attendances of 11,000-15,000. This said, A-League attendance is not too far off MLS (19,000 in 2014) or the English Championship (20,000 in 2016/17).

Table 5. AFL and A-League stadium ownership structures in Australia

A-League stadiums	**Capacity**	**City**	**Owner**	**Structure**	**Purpose of stadium**
AAMI Park	30,000	Melbourne	Victoria	State Gov.	Soccer/rugby
Allianz Stadium	45,000	Sydney	Sydney Cricket Ground Trust	Trust	Soccer/rugby
ANZ Stadium	83,000	Sydney	Venues NSW	State Gov. Auth.	Olympics
Central Coast Stadium	20,000	Gosford	Central Coast Council	City	Soccer/rugby

[58] *Id*.
[59] Corporate Governance, Concise Financial Report, http://s.afl.com.au/staticfile/AFL%20Tenant/AFL/Files/AFL%20Corporate%20Governance.pdf.
[60] JULIE FOREMAN, CORPORATE GOVERNANCE IN THE AUSTRALIAN FOOTBALL LEAGUE: A CRITICAL EVALUATION (2006) at 8.
[61] Attendances (1921-2017), AFL TABLES, https://afltables.com/afl/crowds/summary.html.
[62] Dominic Bossi, *How A-League Expansion Will Work and Why Promotion and Relegation Can be Forgotten*, SYDNEY MORNING HERALD (Oct. 21 2016), https://www.smh.com.au/sport/soccer/how-aleague-expansion-will-work-and-why-promotion-and-relegation-can-be-forgotten-20161021-gs7g0r.html.

Table 5. AFL and A-League stadium ownership structures in Australia

A-League stadiums	Capacity	City	Owner	Structure	Purpose of stadium
Etihad Stadium	56,000	Melbourne	AFL	Non-profit corp.	AFL/soccer
Hindmarsh Stadium	16,000	Adelaide	South Australia	State Gov.	Soccer/rugby
McDonald Jones Stadium	33,000	Newcastle	Venues NSW	State Gov. Auth.	Soccer/rugby
nib Stadium	20,000	Perth	Venues West	State Gov. Auth.	Soccer/rugby
Suncorp Stadium	52,000	Brisbane	Queensland	State Gov.	Soccer/rugby
AFL stadiums	**Capacity**	**City**	**Owner**	**Structure**	**Purpose of stadium**
Adelaide Oval	53,000	Adelaide	South Australia	State Gov.	Cricket
Bellerive Oval	20,000	Hobart	Clarence City Council	City	Cricket/AFL
Carrara Stadium	25,000	Gold Coast	Queensland	State Gov.	AFL
Cazaly's Stadium	12,000	Cairns	AFL Cairns	Non-profit corp.	AFL
Eureka Stadium	11,000	Wendouree	City of Ballarat	City	Cricket/AFL
Kardinia Park	34,000	Geelong	Kardinia Park Stadium Trust	Trust	AFL/soccer
Manuka Oval	15,000	Canberra	Australian Capital Territory Gov.	State Gov.	Cricket/AFL/rugby
Marrara Oval	12,000	Darwin	Northern Territory	State Gov.	AFL
Melbourne Cricket Ground	100,000	Melbourne	Victoria	State Gov.	Cricket
Perth Stadium	60,000	Perth	Western Australia	State Gov.	Four sports
Sydney Cricket Ground	48,000	Sydney	Venues NSW	State Gov. Auth.	Cricket
Sydney Showground Stadium	25,000	Sydney	NSW	State Gov.	Olympics/AFL
The Gabba	42,000	Brisbane	Queensland	State Gov.	Cricket
Traeger Park	10,000	Alice Springs	Alice Springs Town Council	City	AFL/cricket
York Park	20,000	Launceston	Launceston City Council	City	AFL/cricket

V. DISCUSSION

A. Corporate, antitrust, tax, European law, and risk management considerations

The countries discussed generally best represent the Anglo-American stream in legal and corporate thought. If firm and asset holding structures in these countries can be seen as broadly reminiscent, or at least among the most similar in the developed world, then the natural hypothesis is that stadium holding structures should also converge based on similar streams of corporate and regulatory thought. Instead, differences often dictate.

Starting with England, the key takeaway is that the overwhelming majority of recent Premier League stadiums – 26 of 34 – share common corporate ownership with the club playing in them.[63] In all of these instances, the reason for building or substantially renovating the stadium was to host the club. The English level of club stadium ownership is unprecedented in this study.

The primary difference in England relative to the US is that there is no restriction on the supply of clubs and club fan bases are strongly tied to a city, or even an area of a city. This means that prospective owners have many options on which clubs to purchase and once purchased, they can invest in as much talent as they wish to gain promotion (subject to Financial Fair Play regulation). Instead of stadium related revenues, the business play for new owners is the lucrative television rights shared between Premier League clubs. Thus, not only is there less of a scope for relocation, the traditional benefit of relocation – a new publicly funded stadium – is far less important.

Further, restrictions on state aid under European Union law would make stadium subsidies prima facie illegal provision of state resources distorting or threatening to distort competition.[64] Although there are potential exemptions for one-time financial distress, common European interest, cultural development, or economic development in distressed regions, as construed through stadium related decisions by the European Commission, these are unlikely to apply to current Premier League teams. Common interest or cultural development – which the body of European Commission decisions has allowed in instances of national stadiums where the facility will develop the game – would be hard to see as being applied to top division stadiums given both the localized impact of the team and the highly developed nature of the English game, except in circumstances where the stadium results from a mega-event such as the Olympics.

Economic development is a more viable route in certain circumstances where the location is distressed, but this has not yet been tested in the post-Lisbon Treaty English context. However, instances of publicly funded and owned stadiums in distressed places such as Hull, indicate that a limited class of potential facilities can successfully find exemption from state aid restrictions. Likewise, the necessity of one-time aid to a failing club is hard to foresee in light of the Premier League's record television revenues. Still with impending Brexit, European derived limits on state aid may disappear altogether.

Where the stadium and club are not ultimately owned by the same parties, there is divergence in how the stadium is owned and for what purpose it was built. Facilities such as Etihad and London Stadium are mega-event legacies where clubs were able to attain favorable

---

[63] *See* Table 1.

[64] European Commission, Treaty on the Functioning of the European Union, Part Three – Title VII Chapter 1 Section 2 Article 107. (ntd. Bluebook was unclear on proper citation for EU Treaty)

lease terms in order for the public to salvage some significant use. Yet despite being the ultimate respective owners of similarly sized athletics turned soccer stadiums, Manchester and London have selected different governance paths. Likewise, Hull, Swansea, and Hudderfield are smaller centers with smaller clubs with city councils that have chosen to substantially cover stadium investments. The commonality is that substantial public capital contributions have been made where the public sector has wanted the stadium more than the private sector's desire or capacity to pay at the time.

With the monopoly driven incentives for subsidization not present, one might hypothesize that structures would be driven by the next strongest business considerations, namely tax minimization. Yet if a local authority does not have to bid with subsidies to retain a team, then the proliferation of tax break (as opposed to direct grant) subsidies is also weakened. For instance, whereas a team would find value in having a public body exempt from property taxes hold a stadium, a local government in England would seem to have far less pressure to lose part of its tax base than its American counterpart.

Even if a club could persuade a local authority that a new facility could create economic gains in excess of waived property taxes and this break did not offend EU state aid law, this has a different cost in the UK system of land value taxation. Whereas in the US and Canada, most publicly held real property is tax exempt, in the UK's ratable value system takes into account more than the value of land and improvements typically assessed and taxed in North America and exemptions are limited to categories defined at the national level.[65] Instead, the business ratable value is intended to estimate the market value of the premises' annual rent.[66] Applied to stadiums, this translates to the estimated cost of replacing the stadium as well as the club's income and ability to pay. In recent years the setting of business rates for a five year period has also been a source of contention from clubs in the relegation zone.[67] With club revenues highly reliant on television rights from the Premier League, if a team is relegated after their rates are set based upon Premier League income, the tax bill can become a significant burden. As clubs have proven adept at carrying forward losses to avoid large corporate tax bills, ratable value often serves as their largest source of tax payment, with larger clubs with facilities on more valuable land paying in the range of £2 million to £4 million per year.[68]

For ownership structures, a primary consequence of business rates is that they are not on their face avoidable through leasing a facility – someone will have to pay. Still, West Ham has leveraged bargaining power to ensure that the E20, the public corporation tasked with the legacy management of London Stadium, pays roughly 80 percent of the ratable value.[69] Here is the primary instance of a Premier League club acting in much the same way as a North American club extracting subsidy from a public body – instead of the leverage being the potential departure of the club from a city, the bargaining power was derived from the prospect of the stadium being a white elephant if a Premier League tenant was not found.

---

[65] *See* Local Government Business Rates, UK GOVERNMENT VALUATION OFFICE AGENCY, https://www.gov.uk/topic/local-government/business-rates (Last visited Jan. 20, 2020).
[66] *Id.*
[67] *Business Rates System Scores Own Goal Yet Again*, COLLIERS (May 9, 2018), https://www.colliers.com/en-gb/uk/insights/property-news/2018/0509-business-rates-system-scores-own-goal-yet-again.
[68] *Id*.
[69] *Exclusive: Spurs Top The Tax Table*, ALTUS GROUP (June 2019), https://property.altusgroup.com/2019/06/exclusive-spurs-top-the-tax-table/.

In the United States however, publicly owned stadiums are the norm. This is reflective of economic incentives arising from divergent regulatory decisions. Namely, American legislators and courts have chosen to protect collective bargaining through making labor law the primary arena of labor dispute resolution instead of antitrust law.[70] In turn, this has protected leagues from antitrust scrutiny of what may otherwise be anticompetitive and cartel-like behavior.[71] With the monopoly power of leagues intact, the artificial suppression of team supply pits cities and regions in competition with one another to attract and retain teams.[72] This competition is perhaps most visibly operationalized through public stadium subsidies. Where stadiums are heavily publicly subsidized as a percentage of capital cost,[73] there is a high likelihood of public ownership.[74] Where there is a high gross public subsidy cost,[75] a public authority is the overwhelmingly used holding vehicle.[76]

The two primary advantages to stadium-related public authorities are interrelated: first, to access federally tax-exempt bonds for construction, and second, to limit financial risk to general state or local revenues. In the US, state and local government bonds are generally exempt from federal taxation.[77] Under the *Tax Reform Act of 1986*, a stadium bond is classified as private and non-exempt if it meets two conditions: a nongovernmental entity uses over 10 percent of bond funds, and directly or indirectly used business property secures over 10 percent of debt service.[78] Effectively, not meeting the second condition is the only way where a stadium bond can remain exempt.[79] To surmount this hurdle, a state or local government will have to finance 90 percent of the facility and these repayment sources cannot be linked to privately created revenue.[80] This means that venue gross cost is minimized if it is overwhelmingly funded by the state or local government.[81]

If a facility is to be publicly owned, a public authority is secondly an effective means to shield state or local treasuries from default and other risks. In some cases, the inverse may apply where holding the stadium within a public authority protects the stadium asset from a poorly managed state or local government. However other jurisdictions are more willing to bear the risk to general revenues and debt ratings as bonds backed by general revenues can often obtain a lower interest rate.[82] This willingness to accept risk can explain some instances where a stadium is directly held by a local government. Finally, public authorities can be neutral holding vehicles where multiple levels of government (municipal, county, state) make significant financial contributions.

---

[70] Roberts, *supra* note 44.
[71] Stephen F. Ross, *Monopoly Sports Leagues*, 73 MINN. L. REV. 643 (1989).
[72] *Id*.
[73] Long, *supra* note 1.
[74] *Id*.
[75] *Id*.
[76] Ted Gayer et al., *Tax-Exempt Municipal Bonds and the Financing of Professional Sports Stadiums*, BROOKINGS INSTITUTE, Sep. 2016.
[77] *Id* at 6.
[78] *Id*.
[79] *Id*.
[80] *Id*.
[81] *Id*.
[82] Thomas Kenny, *General Obligation Bonds and Revenue Bonds*, THE BALANCE (Aug. 1, 2019), https://www.thebalance.com/what-are-general-obligation-bonds-and-revenue-bonds-417150.

Additionally, public authorities are a way to avoid sales or value-added taxes on personal seat licenses and sponsorships,[83] the former being a common means of team contributions for capital costs. Likewise, public authorities are exempt from property taxes, meaning that a tenant may save tens of millions a year relative to holding the stadium privately. This is again contrasted with England, where stadiums are locally taxed on the tenant's business ratable value that is distinguishable from a land value tax.

Finally, a public authority can sometimes be a way to circumvent state law requiring referenda for major capital project funding, or open meetings and records laws. With the former, this can see public funding procured despite substantial public opposition that would make a referenda difficult to pass, or overcome the failure of a ballot measure. With the latter, the mechanics and operations of ongoing subsidies can be obscured from public view and accountability.

As for teams, unless they have overwhelmingly self-funded the stadium, franchise owners are typically content to be tenants.[84] This allows teams to separate a highly lucrative league business from being responsible for maintenance and ongoing capital expenses for lightly used buildings. Unlike many arenas that are used for over 200 events per year, the size and exposure to elements of NFL stadiums limits the number of concerts and other events.

Within the same country however, MLS stadiums demonstrate somewhat different dynamics. Relative to the NFL, there are two primary differences in MLS stadium holding structures. First, a far greater percentage of soccer specific stadiums are privately held.[85] Second, the publicly held soccer specific stadiums are overwhelmingly owned by municipalities, whereas public NFL stadiums are mostly held by public authorities.[86] The explanations of these differences are interrelated. With the former, NFL stadiums are far more costly endeavors (generally anywhere from five to ten times more expensive),[87] meaning that any single municipality is less likely to be able to afford the capital costs without assistance from senior jurisdictions. NFL teams are also far more culturally valuable to cities than clubs in the relatively nascent MLS – the pressure on politicians to extend subsidies to retain or attract a NFL team are seemingly greater, supported by the significantly higher public gross and capital contributions.[88] Still as MLS has grown in popularity, the league has been increasingly effective in extracting soccer specific stadiums as the price of hosting a club.[89]

However, the significantly higher gross cost of NFL stadiums increases the attractiveness of both federally tax-exempt bonds and the lower borrowing costs that senior jurisdictions can often access. These senior jurisdictions can also offer more significant revenue streams not connected to the business of the facility in order to keep bonds tax exempt in the first place. On the other hand, less expensive MLS stadiums can be more easily funded by single municipalities

---

[83] Patrick Rishe, *6 Reasons Pro Sports Teams Invest In Ancillary Real Estate Development Projects*, FORBES (Oct. 8 2018), https://www.forbes.com/sites/prishe/2018/10/08/6-reasons-why-pro-sports-teams-invest-in-ancillary-real-estate-development-projects/#c22120333aaa.
[84] Long, *supra* note 1 at 100.
[85] *See* Table 3.
[86] *See* Tables 2 and 3.
[87] Long, *supra* note 1.
[88] *Id.*
[89] Kriston Capps, *Here Comes the Soccer Arena Boondoogle*, CITYLAB (Dec. 7, 2017), https://www.citylab.com/design/2017/12/are-soccer-arenas-the-new-football-stadiums/547598/.

or ownership groups. This leads into the latter structural difference concerning how public stadiums are held. The reduced need for tax exempt bonds removes much of the impetus for multi-jurisdiction involvement and sheltering risk separate from general revenues, changing the public authority cost-benefit equation (i.e., an authority might make more sense for an $800 million stadium, but not an $80 million stadium).

Moving to Canada, there is a similarly high incidence of public stadium ownership.[90] However, there are somewhat different incentives for stadium governance structures in Canada than in the US. First, there are no incentives created by tax exempt bonds. Instead, the teams and leagues involved for the most part have limited financial means, while the public parties are willing to finance the facility, perhaps seeing the stadium as having some value as a public or social good, or as a political tool.[91] With these facilities, the similar system of land value taxation in Canada to the US means that public or public university ownership of a stadium allows for a property tax exemption.

Canada also shares some special antitrust protection for professional sports with the US. Indeed, Canada goes further than the US in that federal statute makes special provision for professional sports leagues that has the effect of providing preferential treatment for sports leagues relative to other businesses conducting prospectively anticompetitive behavior. Section 48 of the Canadian *Competition Act* makes the standard of violation for "[c]onspiracy relating to professional sport" that of unreasonably limiting opportunities.[92] This standard includes arrangements concerning "the granting and operation of franchises in the league."[93] Compared to the general prohibition against arrangements between competitors in section 45 of the Act, sports leagues have far more leeway to show that their conduct is not unreasonable, and are not subject to the presumption of anticompetitive behavior in section 45.[94]

Canada, however, may share its greatest and most striking similarities with Australia. In both countries, the overwhelming proportion of stadiums are publicly owned,[95] although Australia lacks university ownership. Likewise, the large stadiums in major cities are debatably beyond the financial means of primary tenants, and the primary tenants are second tier professional leagues relative to giants such as the NFL or Premier League (the CFL and MLS in Canada, the AFL, A-League, Rugby Union/League, and Big Bash Cricket League in Australia). While many AFL clubs run a healthy surplus[96] – in some instances driven by gambling revenue – the club governance structure demanding the reinvestment of profits into development of the game, is not the most amenable to financing stadium construction worth hundreds of millions compared to the billionaire ownership found in the NFL and Premier League.

Instead, the public sector at the state level has accepted the primary financial burden of stadium development and ownership, whether directly or through purpose-built authorities. In Canada however, universities are owners of (or partners in) stadiums in three cities, a structure

[90] *See* Table 4.
[91] Jason Van Rassel, *A Look at Canadian Stadiums Built With Public Funds*, CALGARY HERALD (Aug. 18, 2015), http://calgaryherald.com/news/local-news/a-look-at-canadian-stadiums-built-with-public-funds.
[92] *Competition Act*, R.S.C. 1985, c. C-34, s. 48.
[93] *Id*.
[94] *Id* at 45.
[95] *See* Tables 4 and 5.
[96] 2017 AFL & Club Annual Reports, *FOOTY INDUSTRY*, http://www.footyindustry.com/?page_id=4121.

absent from Australia.[97] As for the motivation behind stadium construction, the distribution is comparable to Canada – each country has multiple stadiums arising out of mega events (such as the Olympics), a proportion that are renovated legacy facilities, and a remainder that are specifically constructed for two sports. Also, neither country has the American incentive of tax-exempt bonds to drive structural arrangements. However, Australia mirrors the US insofar as stadiums are commonly held by state level public authorities.[98]

Australia also shares a similar competition law framework to Canada. However, in Australia there is no parallel provision in the *Competition and Consumer Act*[99] to section 48 of the Canadian *Competition Act*. Thus, the issue of monopoly sports leagues, such as the AFL and A-League, has been left to the courts. As the *Competition and Consumer Act* is relatively recent (2010) legislation, there has only been one address of the *Act* in the sports league context by the Full Federal Court of Australia. In this case, a commitment agreement to keep rugby teams from jumping to a new rival league was viewed by the Court on appeal as an illegal collective boycott.[100]

B. Ancillary Real Estate Development

One of the more noticeable trends in stadium development has been the onset of team controlled or related real estate development ancillary to venues. Indeed, such projects have been seen in all the leagues covered in this article. Thus, it is worth evaluating the issue of whether there is a potential relationship between legal aspects of stadium holding structures and ancillary real estate opportunities. Ancillary development connected to the presence of the stadium was deemed present or absent through the author's analysis of Google Maps and satellite imagery, as well as searching of news media, club sources, and financial records to ascertain a relationship with club ownership parties.

In England, 13 stadiums have ancillary commercial or residential real estate development meeting the standard of the author's review. Seven of these developments are controlled by parties also holding clubs. While the latter category includes well publicized team driven developments such as those by Arsenal and Tottenham, there are also several stadiums that have seen retail parks developed nearby that share parking and road infrastructure with stadiums. Others have seen hotels, apartments, movie theatres, or some combination of the above. In some lesser known projects, such as Reading, Bolton and Derby, club ownership have been leading partners in the real estate. With Manchester City, its owners' £1 billion real estate partnership to transform swaths of former industrial land near the stadium into 6,000 homes[101] is debatably a more significant business venture than many Premier League clubs.

In terms of stadium ownership structure, Arsenal and Tottenham, large clubs with major neighborhood developments own their stadiums and clubs as separate subsidiaries of a larger

[97] *See* Tables 4 and 5.
[98] *See* Tables 2, 3, and 5.
[99] *Competition and Consumer Act* 2010 (Cth).
[100] *News Ltd v Australian Rugby League Ltd (No 2) (Superleague)* (1996) 64 FCR 410.
[101] Adam Jupp, *City Owner and Council to Build 6,000 New Homes in £1bn Deal*, MANCHESTER EVENING NEWS (Jun. 24, 2014), https://www.manchestereveningnews.co.uk/business/manchester-city-etihad-stadium-adug-7313788.

holding company that also has separate real estate development companies. The story is much the same with Manchester City, except for the stadium being leased from the city. Similarly, smaller clubs with ancillary interests either have several subsidiaries under a central holding company, or both the club and stadium in a single holding company and the real estate interests separately.

To use the example of Arsenal, the holding company wholly owns twelve subsidiaries for club-related businesses, including distinct companies for each of the club, the stadium, and the real estate development of the former stadium.[102] The holding company and operating subsidiary structure has a number of prospective advantages. First, risks are contained to separate aspects of the business and assets in one area (such as a stadium) are not subject to lawsuits or finance defaults in another. Second, are the tax benefits, which in the UK include deferred taxation on dividends paid to the holding company and a strong network of double taxation treaties,[103] both aspects which may be appealing to Arsenal's beneficial owners.

In the US, the dominance of stadium ownership by public bodies does not translate to less ancillary real estate development. The NFL has eight stadiums with related ancillary development, five of which have a direct club role. Three of the latter five are around stadiums owned by public authorities, with a fourth being the city/county joint ownership of Lambeau Field.[104] Only Gillette Stadium and the Patriot Place retail development are privately owned alongside the team in the Kraft Group holding company. The remaining stadiums with ancillary development independent from club interests are held by two public authorities and a county. In each instance, the stadium was intended as a spur for ancillary mixed-use development that was eventually delivered on, although sometimes decades after stadium completion (such as in Hamilton County/Cincinnati).

In MLS there are eight stadiums with related real estate development, four of which are club controlled.[105] With the latter four, there are two cities (if the District of Columbia is classified as a city), a county, and LLC directly holding the stadium and club operating rights. Four other stadiums do not have club involvement in ancillary development. In both categories, there have been mixed results – significant planned and phased developments in Colorado and San Jose that are mostly being delivered on, while the strongest construction may be seen in Frisco, Texas, without club participation. In San Jose, the ancillary opportunities were seen as sufficiently lucrative for the club ownership to proceed without any direct stadium subsidies. In Frisco, the suburb had to compete with subsidies against neighboring jurisdictions to be the stadium host in the first place, but also implemented a long term real estate development strategy around the facility that has transformed a rural area into a new mixed-use city center over 15 years.[106] Meanwhile, the lands surrounding the stadium in Commerce City, Colorado, will see a

---

[102] Annual Report and Financial Statements, ARSENAL HOLDINGS LTD. (2018), https://www.arsenal.com/sites/default/files/documents/Arsenal%20Holdings%20Limited%20-%20Group%20Annual%20Report%20ye%2031-5-18%20final.pdf.
[103] *Taxation and Investment in United Kingdom*, DELOITTE (2015), https://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-unitedkingdomguide-2015.pdf.
[104] *See* Table 2.
[105] *See* Table 3.
[106] Steve Brown, *Frisco Square Land Sells for New Development*, DALLAS MORNING NEWS (Nov. 9, 2018), https://www.dallasnews.com/business/real-estate/2018/11/09/frisco-square-land-sells-new-develpments.

blend of public (a new town center complex) and significant phased private development[107] – while sports and real estate magnate Stan Kroenke sought subsidies for a stadium through competition within a region, he also desired land for a major commercial development.

As pertaining to stadium holding structures, the aim across US leagues seems to be to obtain public subsidies and leasing a publicly owned stadium on terms that contractually shift risks and costs away from a club, but proceeding privately if the venue can be financially viable. In a number of these privately owned stadium contexts, team controlled ancillary development has played a significant role in creating a positive value proposition for the stadium from the club's perspective. For both American leagues covered, this value includes a revenue source that does not have to be included in league-wide revenue sharing agreements.[108] The nature of stadium type may also influence financial viability – while a cavernous and expensive NFL stadium that is usable for a limited number of events may be a harder to profit from proposition, a MLS stadium with lessened footprint and more concert potential can not only be a better investment from a stadium revenue perspective, but also make the ancillary development opportunity more lucrative through a more consistent influx of traffic.

Likewise, many instances where significant ancillary development has occurred have either been in low density suburbs (like Frisco or Commerce City) or blighted areas of core cities. In both cases eminent domain, already consolidated ownership, and the acquisition of tax default properties by land banks have allowed for assembly to precede master-planned development. Assembly combined with low rates of occupation allow for zoning law amendments to further contribute to the value proposition for a club in either the public or privately owned facility scenario. In Commerce City for instance, part of the appeal for Kroenke was likely blank slate where density and uses could be planned with the help of a cooperative local government.

Canada has only seen one instance of club-related ancillary stadium development (Ottawa). Here the renovation of a publicly owned stadium and ancillary development was part of a comprehensive plan to transform what was viewed as an underutilized neighborhood, as well as create a facility sufficient to facilitate the return of Canadian football to Ottawa. Perhaps more interesting has been the aggressive strategy of in-house real estate development in Vancouver by the PavCo public authority to recoup BC Place renovation costs through ancillary development.[109] The ability of a provincial corporation to potentially exempt itself both from local property taxes and zoning restrictions, as well as gain access to supply limited casino licenses, has made the development in theory far more lucrative than what the private sector could achieve on the same lands.

The Australian leagues examined however seem more limited on the club-related ancillary development front. With the AFL (and NRL sharing the same structure), the tax-free non-profit club holding structures would seem to explain the lack of club-related ancillary real estate development. Although the non-profit structure has still resulted in considerable operating

---

[107] Master Plan Overview, VICTORY CROSSING (2015), https://www.victorycrossing.com/master-plan/master-plan-overview/.
[108] Rishe, *supra* note 81.
[109] *See* Kenneth Chan, *City Council Approves BC Place Stadium Tower Height With Rental Housing Requirement*, DAILY HIVE (Jul. 25, 2018), https://dailyhive.com/vancouver/777-pacific-boulevard-vancouver-bc-place-tower-pavco-approved-july-2018.

surpluses in large part due to gambling revenues, a mixed-use real estate development may be a leap too far for a tax structure that has seen its share of public criticism.[110] A-League teams are for profit ventures and beneficially owned by individuals, but none of their stadiums are privately owned.

Even if Australian clubs wished to pursue ancillary development options, the stadiums themselves are overwhelming owned by state governments or public authorities, and are often situated in legally dedicated athletics parks where transition to non-athletics use may have more land use hurdles than with American stadium sites. Where there has been land available for master planning, major ancillary development projects have instead often come from public authorities, such as the mixed-use village developed in Sydney's Olympic Park, or the stadium anchored Docklands in Melbourne.

C. Limitations

Finally, I should note some limitations. While there may be associative relationships between club success and stadium holding structures, especially in the Premier League context, this issue is beyond the scope of the paper. Further research and interviews with stadium controlling parties may also reveal other tax motivations or historical legacies behind stadium holding structures. Additionally, stadium ownership is merely one avenue of investigation in the realm of stadium governance and there is strong potential for further useful work in many related areas. Some particularly interesting paths of future related research include league structures, club holding structures, as well as club board governance, financial disclosures, and accounting practices.

VI. CONCLUSION

This article has evaluated ownership structures of 114 stadiums in England, the US, Canada, and Australia through the lens of the broader corporate governance law and policy convergence seen in these jurisdictions. While publicly owned stadiums are the norm in the US, Canada, and Australia, they are the exception in England. The root explanation for differences between England and the US concern league monopolies and the threat of relocation if a publicly financed stadium is not provided. This effect is seemingly stronger in more lucrative and culturally ingrained leagues such as the NFL, and weaker, but still present in developing leagues like MLS. Publicly financed stadiums are then owned through various public holding structures based upon risk allocation and financial cost-benefit as determined at a national level, but also informed by law and contract.

These legally derived factors include whether and how property taxes and taxes on personal seat licenses or sponsorships are avoidable, tax exemption of government bonds in the US, and the potential of ancillary real estate development to create additional revenue streams outside of league revenue sharing obligations to change a stadium value proposition. In some cases, public authority ownership can serve to obscure activities from public records and open meetings laws. In other instances, namely the UK, even if there were more governments willing

---

[110] Eryk Bagshaw, *'Open to Abuse': Experts Slam AFL's Tax-free 'Rort'*, SYDNEY MORNING HERALD (Mar. 4, 2018), https://www.smh.com.au/politics/federal/open-to-abuse-experts-slam-afl-s-tax-free-rort-20180304-p4z2rx.html.

to provide subsidies, European state aid laws for the present effectively restrict subsidies outside of economic distress, national stadiums, or major cultural events such as the Olympics.

In Canada and Australia, there are similar monopoly leagues to the US, but these leagues do not extract stadium subsidies in the same way as in America. Canada has seen new and substantially renovated publicly owned stadiums mostly arise out of local and provincial governments viewing the stadium as a social good, and provincial governments recognizing an opportunity to win electoral favor with fans in such places as Regina, Winnipeg, or Hamilton. In MLS however, three Canadian cities did respond to monopoly incentives to provide a soccer specific stadium as a condition of successful expansion bids.[111]

Australia has similar monopoly league power to Canada from an outcome perspective. While teams in the AFL and A-League relocate, the team licensing system, as well as the lack of viable alternative hosts willing to provide a superior stadium situation, lessens the extractive power of relocation best displayed in the US. Yet more often, unlike England (restricted by European state aid law), and somewhat like Canada, state governments have seen stadiums as public or social goods. As with stadiums like Canada's BC Place, Australian state-owned stadiums are generally multitenant and multiuse.

A commonality between all jurisdictions is the interest in ancillary real estate development on the part of some teams to improve the value proposition of a stadium. While the preference is for a publicly subsidized stadium where the club serves as a tenant on favorable terms, this preference is obtainable depending on the country and the market within the country. For club owners with the capacity to participate, ancillary development through a separate real estate company is a potentially lucrative source of revenue beyond event periods. In North America, these real estate revenues are further shielded from league revenue sharing. For some governments where clubs lack the potential or interest to develop property, the stadium can serve as a planning tactic to develop new land value tax revenues to recoup subsidy costs. For other governments with more limited means to directly subsidize stadiums out of pocket, their legal tools to assemble blighted lands such as eminent domain and land banking, as well as property tax abatements can close financial feasibility gaps.

One other legal component present in each of the US, Canada, and Australia, but not England, is a strong federal structure. Considering the substantial role played by state or provincial governments in stadium finance and ownership in these countries, as well as the provision of public goods more generally, the constitutionally derived roles of sub-federal governments seem to contribute to the outcomes described in this paper.

More broadly though, despite a move towards convergence in other legal and governance spheres, this article has shown that different political, regulatory, and economic incentives, grounded largely through law, have led to somewhat divergent stadium holding structures. These structures can be seen as a spectrum. At one end English stadiums, represented through the Premier League, are overwhelmingly privately owned by the same ultimate controlling parties as their resident clubs. At the other, American NFL stadiums are almost all publicly owned, with state level public authorities being the most common holding vehicle. Still, within these national

[111] Although Vancouver's BC Place is not soccer specific, the Whitecaps' MLS bid was premised on a waterfront soccer specific stadium that both the league and team latter deemed impractical given local planning restraints and the quality of the BC Place renovation.

realities, a number of legally grounded influences are seen across borders, namely the structuring of club-related holdings to best fit within tax, competition, land use, public authority, and public information laws, as well as internal league contracts.